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Current Topics.

Solicitors and National Service.

THE position with regard to the new classes of older men and young women who will soon become liable to be called up for various kinds of national service has recently been under review by the Council of The Law Society, which has been in touch with the Ministry of Labour and National Service on the subject. According to a statement in the current issue of *The Law Society's Gazette*, the present position with regard to female solicitors and clerks is that they will not be called for interview for the time being. Women employed in solicitors' offices will not be exempted from the operation of the Acts conscribing women, but the Council are in negotiation with a view to arranging that solicitors may retain, unless and until they have been replaced by properly trained substitutes, female clerks who are occupying key positions in solicitors' offices, and cannot be replaced, and that in respect of other female clerks they should not be withdrawn until a reasonable time has elapsed in order to allow for alternative arrangements being made. With regard to male solicitors and clerks, the Council are informed that in view of the progressive age-raising scheme for men at present reserved it would be contrary to Government policy to include any new occupations in the Schedule of Reserved Occupations. The existing over-thirty deferment procedure will until further notice continue to apply to those between the ages of thirty and forty-one at the date of registration, and will be extended to men up to the fifty-year-old age group. The under-thirty procedure will also continue to apply to those aged twenty-five to twenty-nine inclusive at the date of registration. Full particulars of these have already been published. For the present, and until further notice, applications for the deferment of men over forty-one will not be considered, as they will not in any case be liable for military service until a Royal Proclamation is made under the National Service (No. 2) Act.

Pre-War Trade Practices.

ON 17th December, 1941, the Restoration of Pre-war Trade Practices Bill was presented in the House of Commons and read a first time. It defines a trade practice, in relation to an undertaking or branch of an undertaking as any rule, practice or custom (whether obtaining by virtue of contracts of employment or otherwise) observed in the undertaking or branch with respect to the class or classes of persons to be or not to be employed therein, or with respect to the conditions of employment, hours of work, or working conditions of the persons or any class of the persons so employed. The Bill proposes that where a trade practice obtaining immediately before the war has been departed from in an undertaking during the war, the employer shall, within two months of a date to be appointed by order, restore or permit the restoration of the practice and maintain it for eighteen months. If restoration was effected before the appointed date, the Bill proposes that it should be continued for eighteen months from that date. If an undertaking or branch of an undertaking began to be carried on during the war, the employer is similarly obliged to introduce and maintain such trade practices as obtained immediately before the war in undertakings or branches of undertakings carried on in circumstances most nearly analogous. An agreement to modify or waive the obligation to restore trade practices or for the reference of the question of modification or waiver to arbitration, may be made as respects any undertaking or branch between employers or their organisations, and trade unions. Questions arising as to the existence or discharge of an obligation by an employer may be referred to the Minister, who

must use any suitable available machinery for settling the question. The Bill also provides for the setting up of arbitration tribunals, and for penalties to be imposed on employers for non-compliance with awards. Orders in Council may be made applying the Act to undertakings carried on by the Crown. As far as local authorities are concerned, it is proposed that the measure shall apply only to gas, water, electricity and transport undertakings, and undertakings of such other classes as the Minister may by order direct. The Minister is, of course, the Minister of Labour and National Service. The Bill is a necessary measure of post-war reconstruction and contains the requisite elasticity to enable the pre-war standard as to conditions and hours of work to be preserved, with due regard to the exigencies of post-war economics.

Poor Persons' Divorces and the Services.

THE welcome news is reported in the current issue of *The Law Society's Gazette* that the Council of The Law Society, after consultation with the Lord Chancellor's Department and the Army Welfare Department, has decided to establish, as a war-time measure, a department of The Law Society under the supervision of a solicitor to undertake matrimonial cases under the Poor Persons Procedure, where any of the parties are in the services. Since the war began and as time goes on, the delays between the lodging of an application by a poor person and the hearing of his case by the court have increased substantially, so that now in many districts it is no uncommon thing for as long as eighteen months to elapse before a case can be brought on for trial. Delays, though inevitable in war-time, cause unnecessary anxiety, and from the national point of view, the seriousness of this is more particularly evident in the case of men and women in the Forces, as it appeared from communications received from the service authorities that efficiency was impaired by anxiety over private affairs. Men and women in the services present the peculiar difficulty that they seldom remain long in the same district, and accordingly a number of Poor Persons' Committees have felt unable to issue certificates except in the home districts of the persons concerned, who necessarily are not often stationed there. Accordingly many applications in respect of serving soldiers, sailors and members of the Air Force have been sent to London, and the London Committee has endeavoured to dispose of these cases. The new department of The Law Society is to be established in order to ease the pressure on the committees and the conducting solicitors throughout the country, and in the hope and belief that this course will expedite the hearing of all cases. The Lord Chancellor has now made new Supreme Court Rules (see p. 8) to provide that a sum not exceeding three guineas shall be paid to The Law Society out of the deposit paid in any such case. It is believed that the sum so produced will be found sufficient, and if the funds so provided be found to be in excess of the money required, a smaller sum will be taken out of the deposits. The new department should be in full operation by 1st January, 1942, and provincial poor persons' committees have been invited to refer to the London Committee after that date any service cases with which they feel they cannot themselves manage to deal with expedition. The new department should contribute greatly towards a necessary easing of the situation, as the greater part of the work involved is frequently the preparation of the case, and, indeed, many solicitors must feel, on hearing their cases briefly dealt with in court, that the mountain has given birth to a "ridiculous mouse." The result, however, is vital to service litigants, and all the assistance that the courts are not unnaturally willing to give in the way of permitting evidence to be taken on affidavit necessarily increases the work and responsibility of preparation.

Articled Clerks and Premiums.

THE many financial obstacles in the way of the brilliant middle class youth who seeks a career in any of the professions have been recently the subject of comment in the correspondence columns of the daily Press. The correspondence began with a letter to *The Times* of 12th December from Mr. EDWIN R. MANLEY, the headmaster of Rothwell Grammar School, in which he commented on the system of taking premiums from articled pupils by local government officials and the handicap to the clever boy who has no command of funds. Dr. J. H. HALLAM wrote in *The Times* of 17th December that education authorities are already able, by means of grants for training, to assure to candidates selected by open competition admission to such professions as teaching, librarianships, and welfare work. If the premium system is to continue, he asked, should not any new educational legislation empower them to do the same in the case of other occupations where the premium bar exists. In *The Times* of 19th December, Mr. F. S. DODSON, Clerk to the Trustees of Taunton Town Charity, pointed to the grants made by his trustees, free of interest, or a bond for repayment being entered into by the pupil and his parent or guardian or other person, and said that there were organisations in all parts of the country to assist in similar cases. Without belittling in any way the valuable work done by such organisations, it must be said that their benefits cannot be more than sporadic and occasional. The special position of the solicitors' profession was the subject of a letter from a solicitor, Mr. J. S. GOLDSSTONE, to the *Manchester Guardian* of 16th December, in which he pointed to the heavy stamp duties and premiums, the expense of purchasing law books and paying tuition and examination fees in the way of the talented youth who wished to become a solicitor. He wrote that there are only two essentials to equip a man as a solicitor—practical experience and theoretical knowledge. If a man has been a paid solicitor's clerk for a requisite number of years, he added, he will have the experience, for solicitors do not pay clerks unless they work hard. If, during these years he passes the necessary examinations, he should be automatically admitted a solicitor, and a more intelligent class would thereby be recruited. It is indeed difficult to see any substantial justification for the retention of the premium system of admission to the professions. The unanswerable argument against it is, as Dr. MANLEY wrote in *The Times* of 23rd December, that "it is farcical to talk of making the best use of a nation's man power, while we still side-track, at a rough estimate, a good 80 per cent. of the available first-class ability."

Grants of Probate : Alleged Delay.

As a result of inquiries instituted by the Council of The Law Society into alleged delays in obtaining grants of probate owing to the removal of the Estate Duty Office and the Principal Probate Registry to Llandudno, it has been established that the time taken generally in dealing with cases had not increased, but that there might be delay in individual cases owing to the need for dealing with inquiries by correspondence instead of by personal interview. According to a statement in the current issue of *The Law Society's Gazette* the Controller of the Estate Duty Office has said that the great majority of cases left the Estate Duty Office within a week of their receipt. He promised to see whether any saving of time could be effected, but feared that the reduction could not in any case be very great. Papers wrongly addressed would inevitably be delayed, and from time to time papers intended for the Principal Probate Registry were sent to the Estate Duty Office and vice versa. Failure to observe the correct procedure had also occasioned delays, and solicitors should carefully scrutinise papers before sending them out, in order to avoid inquiries as far as possible. For the benefit of solicitors generally and, in particular, of those whose skilled clerks are absent on national service, the Council reprints, in the current issue of the *Gazette*, the notes on procedure which are issued by the Estate Duty Office. Among the comments in amplification of these notes, the following are noteworthy : (a) Grants will be sent by post to the extracting solicitors. It is asked that the address furnished at the head of the oath should be their full postal address. (b) If photographic copies of the Grant (1s. each) are required, a request can be made for them with the application for the Grant and the cost included in the cheque for the Probate Court fees. (c) Where the original Grant has been destroyed or rendered useless as a result of enemy action, application for a duplicate Grant may be made by certificate or letter, stating—(i) that the document which it is desired to replace has been destroyed or rendered useless by enemy action; and (ii) the reason why such replacement is required. The appropriate fee for such a duplicate grant is 11s. 9d. (d) It is sometimes found that the amount sent for court fees is incorrect and this should be verified (see "Tristram and Coote's Probate Practice," 18th ed., p. 863); Fee No. 1 to Schedule I of the Supreme Court Non-Contentious Probate Fees Order, 1928.

Control of Building.

THE control of building operations has been carried a stage further by an order made by the Minister of Works and Buildings on 10th December under reg. 56A of the Defence (General)

Regulations, 1939 (S.R. & O., 1941, No. 1986). Under para. (e) of the proviso to para. (1) of reg. 56A, no authorisation is required from the prescribed authority where an operation is begun at any time on or after 1st January, 1942, if the total cost of the complete operation does not exceed such sum as may be prescribed. The present order prescribes the sum of one hundred pounds. The order similarly prescribes the sum of one hundred pounds for the purposes of the proviso to para. 2 of reg. 56A, which provides that no licence under that paragraph shall be required for an operation begun after 1st January, 1942, which involves doing of any description of any work specified in Pt. III of the 6th Scheld. to the Defence (General) Regulations, 1939, if the total cost of the work of that description involved in the operation, including in particular the proper proportion of any such charges as aforesaid, does not exceed the sum to be prescribed. Further, the order fixes £100 as the sum prescribed under the proviso to para. 3 of reg. 56 (a), which provides that no licence shall be required under that paragraph for the carrying out on any property (as defined by that paragraph) of any of the work specified in para. 3 if the cost of the work, including in particular the proper proportion of any charges mentioned in the paragraph, together with the cost, including in particular the proper proportion of any such charges of any other such work carried out on the property within the previous twelve months does not exceed the prescribed sum. The importance of the order is that it extends the £100 limit beyond which authority for building must be obtained, to work done in the construction, reconstruction, alteration, demolition, repair or decoration of a building, and any works done to protect such building or works against hostile attack and work done as a temporary measure pending the repair of the building or works. As the order is to come into operation on 1st January, 1942, its terms deserve the careful and immediate attention of those concerned on behalf of clients in the building trade. The obvious practical result of the change in the law is that continuous maintenance work will be impossible without Government licence, which will be granted subject to whatever conditions as to the number of men retained, the amount of expenditure and other matters, as may be expedient.

Recent Decisions.

In *Swift v. Macbean and Another* on 12th December (*The Times*, 13th December), BIRKETT, J., held that a lease of furnished premises to commence in the event of a declaration of war on any State by Britain and to end with the cessation of hostilities was not frustrated by reason of the premises being requisitioned by the Ministry of Health, and neither the fact that the landlord owned the furniture nor the fact that the period of the lease was indeterminate made any difference.

In *Brackenborough v. Spalding Urban District Council* on 15th December (*The Times*, 16th December) the House of Lords (the Lord Chancellor, LORD RUSSELL OF KILLOWEN, LORD MACMILLAN, LORD WRIGHT and LORD PORTER) held, dismissing an appeal from the Court of Appeal, that there was no duty resting on a market authority to see that animals did not escape from the market and injure people outside. A steer had escaped from a pen in the market, by slipping under a slack chain, and fatally injured a member of the public.

In *R. v. Deane* on 15th December (*The Times*, 16th December) the Court of Criminal Appeal (the Lord Chief Justice and HUMPHREYS and ASQUITH, JJ.) held that although a case might arise where it would be undesirable to allow a jury to try a case when they had heard a plea of "guilty" withdrawn, in the circumstances of the present case there was no unfairness or impropriety in allowing the trial to take place before a jury who had heard the plea. The accused had twice pleaded guilty, a second time because the clerk had said that he could not hear, in the presence of the jury, which was not yet sworn, but had, on the advice of counsel, withdrawn that plea and pleaded "not guilty."

In *Roadways Transport Development, Ltd. v. Attorney-General* on 18th December (*The Times*, 19th December) the Court of Appeal (the Master of the Rolls, and CLAUSSON and DU PARQ, L.J.J.) held, allowing an appeal from a decision of FARWELL, J., that payment to the possessor of a requisitioned motor vehicle was sufficient to discharge the Army from liability to the true owner, the latter being left to his remedies against the possessor (see ss. 112, 113 and 115 of the Army Act, 1881). The court remarked on the obscurity of the sections and expressed the hope that the legislature would give attention to the matter.

In *R. v. Governor of Brixton Prison (ex parte Pitt Rivers)* on 18th December (*The Times*, 19th December) a Divisional Court (the Lord Chief Justice and HUMPHREYS and WROTTESLEY, JJ.) held that it was not necessary for the validity of a detention order under reg. 18B of the Defence (General) Regulations, 1939, that it should contain a recital that the Home Secretary believed on reasonable grounds that it was necessary to exercise control over the detained person, and that the court should not exercise its discretion in the present case to inquire into the facts under ss. 3 and 4 of the Habeas Corpus Act, 1816.

Criminal Law and Practice.

Receiving and Circumstantial Evidence.

It is old and well tested law that on a charge of receiving stolen goods well knowing them to have been stolen it is not necessary to prove the theft of the goods by direct evidence, so long as there is satisfactory circumstantial evidence of the theft. The proposition sounds sufficiently self-evident not to need the authority of decided cases, but the borderline between mere suspicious circumstances and substantial circumstantial evidence is often difficult to draw.

For example, the question was strenuously argued at Aylesbury Assizes on 14th March, 1839, before Tindal, C.J. (*R. v. Morgan*, 3 J.P. 149). In that case the alleged thief and the alleged receiver were both charged, and the bill against the alleged thief was thrown out by the grand jury. The charges were of stealing and receiving barley, and the prisoner on the receiving charge admitted that though he had bought it legitimately, it had been thrown over his wall at night time. Tindal, C.J., held that there was circumstantial evidence of the theft to go to the jury. The prisoner, however, was acquitted.

A similar case in which there were dealings in the middle of the night and goods were deposited at the accused's premises by a side door, went to appeal in *R. v. Sbarra* (1918), 13 Cr. App. Rep. 118. Darling, J., said: "The circumstances in which a defendant receives goods may of themselves prove that the goods were stolen, and further may prove that he knew it at the time when he received them." He added that the circumstances, in the court's opinion, were enough to prove that the goods were stolen, and dismissed the appeal.

In the more recent case of *R. v. Fuschillo* (1940), 2 All E.R. 489, enormous quantities of sugar were found in the appellant's premises, and the appellant said to the police "I don't know why I took it in. I was a fool. This means going away." The appeal was dismissed.

There is also recent authority on the point in relation to the construction of a local Act of Parliament. In *Scott v. Tilley* (1937), 81 Sol. J. 864, the information was brought under s. 124 (1) of the Wolverhampton Corporation Act, 1925, and the relevant words of the section were "having in possession" goods "which there was reasonable ground to believe or suspect were stolen. The goods in question were sparking plugs of a particular make, and there was evidence that there was a condition on their sale that they should only be used for fitting to new engines and on no account for resale. The appellant stated that he had bought them from a big motor firm as surplus stock, but refused to say who the firm was. He kept no books or receipts relating to the plugs. The justices convicted and fined the defendant. On appeal by way of case stated, Lord Hewart, C.J., said: "The suspicion which had been formed on the reasonable grounds that undoubtedly existed was strengthened by subsequent or collateral factors, not least the absence of books or receipts referring to this considerable parcel of goods." The appeal was dismissed.

A similar question was raised by the stipendiary magistrate at Old Street Police Court in *R. v. Rossi* and *R. v. Clarke* on 20th November. The charge was under the Metropolitan Police Courts Act, 1839, s. 24. This provides that every person who shall be brought before a metropolitan police magistrate charged with having in his possession or conveying in any manner anything which may be reasonably suspected of being stolen or unlawfully obtained, and who shall not give an account to the satisfaction of the magistrate how he came by same, is guilty of a misdemeanour punishable by a fine of not more than £5 or by imprisonment for not more than two months.

The wording of this section, it will be observed, is substantially different from that of s. 33 (1) of the Larceny Act, 1916, imposing penalties for receiving property "knowing the same to have been stolen or obtained in any way whatsoever under circumstances which amount to a felony or misdemeanour. Under the earlier section it would appear that the magistrate must be satisfied with the explanation given by the accused, and this appears to be somewhat stronger than the requirement of an explanation which might reasonably be correct in order to secure an acquittal under the later Act (*R. v. Schama and Abramovitch*, 11 Cr. App. Rep. 45). Probably, however, the magistrate would be guided by that case in dealing with persons accused under the earlier Act.

It should also be noted that the earlier section is intended to curb the mischief of conveying stolen property in the street or at least in transit (*Hadley v. Perks* (1866), L.R. 1 Q.B. 444, and *R. v. Whitley* (1867), 31 J.P. 565). Those decisions were based on the ground that s. 24 of the 1839 Act was only supplemental to s. 66 of the Metropolitan Police Act, 1839, which empowered a constable to stop, search and detain any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully detained. "Having" was held to be *eiusdem generis* with "conveying."

In the recent case at Old Street the magistrate expressed dissatisfaction with the evidence that the goods had been stolen. The police had stopped a man who was seen coming out of a café after lunch and he was carrying a parcel containing a few pairs of ladies' silk stockings. On a search of the café some dozens of

pairs of stockings were found. There was no evidence of identification of the stockings with any stolen property and both the accused bore exemplary characters. There were no circumstances such as flight, concealment of evidence or false statements. The magistrate dismissed the cases.

In receiving cases circumstantial evidence is usually of the highest importance, and it must be more than ever so in applying a section providing against conveying anything which may be reasonably suspected of having been stolen. The only difference between the application of such a section and that of s. 33 (1) of the Larceny Act, 1916, is that it may well be that the onus of proof is much heavier in the latter case, as it must be proved that the goods in question have in fact been stolen, while in the former case the evidence need only be such as would cause a reasonable person to suspect theft.

A Conveyancer's Diary.

Legacies out of Personal Estate.

ON various occasions in the past I have commented on some of the difficulties to which s. 34 of the Administration of Estates Act, 1925, gives rise, particularly so far as concerns its application where the estate is solvent. *Re Rowe* [1941] Ch. 343, provides a further example of the litigation to which this section, and the schedule attached to it, give rise.

The testator had made a will which contained only two material clauses. By the earlier of them he had given five pecuniary legacies to named persons. By the later one he said "I devise all my real estate and bequeath all the residue of my personal estate to [A and B] in equal shares." Nothing could have seemed simpler. The trouble, however, was that the testator's personality was insufficient to satisfy the legacies, the realty was, however, ample.

Now, there is a rule, often called the rule in *Greville v. Brown*, 7 H.L.C. 689, to the effect that general legacies are charged on residuary realty as well as on residuary personality if, and only if, the residue of the real and personal estate is "given in one mass." This is one of the rules which we all tend to forget, presumably because most wills nowadays contain a residuary devise and bequest on trust for sale followed by an express trust to pay, out of proceeds of the general sale, debts, testamentary and funeral expenses and the legacies. This standard device, of course, negatives the rule. The difficulties that arose in *Re Rowe* are an example of how careful the conveyancer has to be not to defeat his object by his apparent simplicity (I say "defeat his object," for the result of the case was that the legatees went short, notwithstanding that the estate as a whole was more than adequate to meet them, a state of affairs which the draftsman can hardly have desired to bring about).

There could, of course, have been no doubt at all, before 1926, but that the due course of administration was to pay the legacies so far, and so far only, as the personal estate would go, the universal devisees taking the whole realty free of the legacies, assuming that the court was going to hold that the will was so drawn as not to dispose of the estate "in one mass." That was the view taken by the late Mr. Hawkins, who stated, as long ago as the first edition of his famous work on wills, that "if the residuary real estate were given separately from the personal estate, *although to the same person*" (my italics), "it does not appear that the legacies would be a charge on the real estate" (p. 295). There could, I think, have been little doubt that such was the case in *Re Rowe*, as a mere matter of construction, as the testator gave to A and B "all my real estate," but only "the residue of my personal estate." In construing a will it is the court's duty to expound what the language used means, not what the draftsman thought that it meant, and I do not see how the gift in question could possibly be treated as a gift "in one mass" consistently with giving any effect to the markedly different language used in regard to the realty and the personality respectively. Moreover, I think the court was bound to take account, on the whole question, that it would have been extremely simple to charge the legacies on the realty as well as on the personality, by the mere insertion of the words "subject thereto" before the gift of realty and residuary personality.

That being the position on construction, there could, as I said, have been no doubt at all, under the old law, that the legatees could look only to the personality. But a valiant, though unsuccessful, effort was made to show that the Administration of Estates Act had altered the position. I must confess to a strong sympathy with the idea underlying this argument, viz., that it is generally supposed that one object of the property legislation of 1925 was to assimilate the law as to the devolution of realty to that relating to the devolution of personality. Unfortunately, however, the only provisions that are the least helpful in this connection are s. 34 (3) and Sched. I, Pt. II. The subsection says "Where the estate of a deceased person is solvent his real and personal estate shall, subject to rules of court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any, contained in his will, be applicable

towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part II of the First Schedule to this Act." The latter provision, so far as material, is as follows: "Order of application of assets where the estate is solvent . . . (2) Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention thereout of a fund to meet any pecuniary legacies, so far as not provided for as aforesaid."

It was argued that the law had been altered by the words which I have put in italics, as it was suggested that they indicated that a fund was always to be put aside out of residuary gifts, real as well as personal, to meet pecuniary legacies. This argument, however, broke down for several reasons. First, the gift before the court was not a devise of *residuary* realty at all, but one of the whole realty, juxtaposed to, and so apparently distinguished from, an express gift of residuary personality. Second, the expressed purpose of s. 34 (3) is to deal with the order in which the estate is to be applied to meet liabilities, nothing whatever being said about legacies. Third, there is nothing in the schedule to say that legacies are to be paid out of residuary realty, but merely that in applying the second group of assets towards paying the liabilities a sum sufficient to cover the legacies is to be set aside and only to become available towards meeting the liabilities at a later stage in applying the schedule. Fourth, it had been held by Clauson, J., in *Re Thompson* [1936] Ch. 676, that the rule in *Re Boards* [1895] 1 Ch. 499, was still good law and had not been altered by these same provisions of the Administration of Estates Act. *Re Boards* was, however, an application of *Greville v. Brown*, as is made clear in the judgment of North, J. For all these reasons, Farwell, J., felt obliged to hold, though evidently with some hesitation and a certain reluctance, that the pecuniary legatees in *Re Rose* could only get as much of their legacies as the personality could provide.

There cannot really be much doubt but that this decision did not give effect to the desires of the testator, though, if I may respectfully say so, it is manifestly correct in law. The fact is that this rule, that legacies are primarily charged on personality, must be regarded as a stock "catch"; I suppose that in the old days it was pretty generally known, but as the law in general now stands, most of us tend to assume that the rules about realty and personality have been assimilated, so that we overlook this one. *Re Rose* must serve as a reminder that one should always either preface a gift intended to be residuary with the words "subject thereto," unless one is following the more usual, though more complicated scheme, of creating a general trust for sale of all property not dealt with specifically (using that word in the narrowest sense) and charging legacies, as well as liabilities and duties, upon the consequent fund of proceeds of sale.

Our County Court Letter.

Loss of Handbag in Shop.

IN *Milward v. Lewis's, Ltd.*, recently heard at Birmingham County Court, the claim was for £20 as damages for negligence and breach of duty. The plaintiff's case was that, having chosen a coat in the costume department of the defendants' store, she asked to be taken to a cubicle for the purpose of trying on the coat. No cubicle being available, a mirror was brought forward as a screen. A little fitting room was thus contrived, and the plaintiff placed her handbag and other articles on an adjacent settee. An assistant assured the plaintiff that the articles would be all right on the settee, but they disappeared. On the loss being reported, the plaintiff was treated in a high-handed manner, as the house detective expressed doubts as to any loss having been incurred. It was contended, for the plaintiff, that the bag was entrusted to the assistant, and therefore her employers were liable as bailees. The only recompense received by the plaintiff was fourpence for her fare home. The defence was that the assistant had heard in court, for the first time, that she had ever been asked to take charge of the handbag. No legal duty was imposed upon the defendants in the circumstances. His Honour Judge Finnemore was not satisfied that the bag was placed on the settee under direct instructions from the assistant. If a customer placed property close to herself, no duty was imposed on owners of stores to look after it. There had been no actual bailment and no breach of duty. Judgment was given for the defendants, with costs.

Home Guard's Right to Shoot.

IN a recent case at St. Austell County Court (*Coon v. May*) the claim was for £15 4s. 6d. as damages for negligence, alternatively that the defendant failed in his duty towards the plaintiff by unlawfully and negligently firing a shot-gun at the plaintiff's motor car. The defence was a denial of negligence or of any failure in duty to the plaintiff, and that the defendant was acting in the execution of his military duty, in pursuance of which the defendant had orders and authority to fire the gun. The plaintiff's case was that, having seen a red light, he slowed down and stopped his car on hearing a shout of "Halt." The plaintiff replied "Friend" and put his right leg out of the car, whereupon shots

broke his windsreen. The defendant's case was that he was on active service as sentry, with instructions to challenge everybody approaching, whether on foot or in a vehicle. His duty was then to ascertain who they were, what their business was and to see their identity cards. If necessary, the defendant had orders to fire, and, as the plaintiff had been challenged three times, but still drove his car on, the defendant had fired two or three seconds after the last challenge. Corroborative evidence was given by the defendant's platoon commander, and by four Home Guards, that the car stopped simultaneously with the firing of the shot. There were no written instructions to fire, as this was left to the sentries' discretion. His Honour Judge Scobell Armstrong observed that the soldier remained a citizen until the country was placed under martial law. The printed instructions on the use of firearms did not ignore, but emphasised, the law of the land. The evidence was that the defendant never meant to fire at the driver of the car, but only at the radiator. That particular kind of gun, however, had a kick, with the result that the shot struck where it did. The issue was: did the driver of the car continue to advance in disobedience to the challenge? The driver was not injured by the scattering of the glass, some of which was on the seat. This indicated that the plaintiff had already left the driving seat, and was getting out of the car when the shot was fired. The plaintiff had acted reasonably in approaching the light slowly, until he heard the challenge. The defendant was evidently aware that the car was not speeding along, in order to "rush" the post, but had attempted to obey the challenge by slowing down. Although the witnesses all thought the car was moving forward, there was no evidence to justify any reasonable belief by the defendant that the car was going to "rush" him. A double precaution had been adopted, as a man was posted ten yards behind the red light. The defendant might have shouted to this man to fire if the car passed him. There was thus no sudden emergency in the sense that the only course was to fire. The circumstances required the defendant to act with greater caution and more restraint than he did. As a brave and honest defender of the realm, the defendant was entitled to every consideration. There was a distinction between the law of the battlefield and the law of England, and the latter was binding upon soldiers and civilians alike. Without straining in any way against the defendant the word "reasonable," the plaintiff was entitled to recover. Judgment was therefore given for the plaintiff, with costs.

Invalid Title to Motor Car.

IN *Bowmaker, Ltd. v. Lee*, recently heard at Coventry County Court, the claim was for £14 6s. 8d. as the balance of the purchase price of a Singer 9 h.p. motor car. This had been originally sold under a hire-purchase agreement, whereby instalments were payable over eighteen months. On the payments ceasing, it was found that the car had been sold several times. It was eventually traced to the defendant, and, in default of payment of the above amount, the plaintiffs claimed the return of the car. The defendant's case was that he had bought the car for £40 in January, 1941. He was then unaware that anything was due to the plaintiffs, and he had resold the car for £36 before having notice of their claim. His Honour Judge Hurst observed that the defendant's only remedy was to try to get his money back from his immediate seller, who had involved him in the difficulty. Judgment was given for the plaintiffs for the amount claimed, with costs.

Reviews.

Rent and Mortgage Emergency Legislation. By C. WILLIAM SKINNER, of Lincoln's Inn, Barrister-at-Law. Second Edition, 1941. pp. xiv and (including Index) 137. London: The Estates Gazette, Ltd. 12s. net.

The scope of this work is wider than its title implies. Additional chapters relate to the Defence (Evacuated Areas) Regulations, 1940, and the Liabilities (War-time Adjustment) Act, 1941. The Landlord and Tenant (War Damage) (Amendment) Act, 1941, and the Housing (Emergency Powers) Act, 1939, are also adequately explained. A chapter on recent legal decisions includes cases decided to the 31st July, 1941. The impression gained is that a vast amount of information has been included in a volume which is easy to read and handle. The busy practitioner will find this a reliable book of reference on a branch of the law which is still in a state of rapid development.

Mr. Ralph Hare Griffin, F.S.A., of the Inner Temple, E.C., barrister-at-law, formerly Registrar of Patents and Designs, left £59,242, with net personality £54,326. He left £1,000 to the Hon. Society of the Inner Temple, desiring (but creating no trust in the matter) that the income be used in purchasing books "in memory of my benefactor, The Rt. Hon. Sir John Eldon Gorst," and £1,000 to the Barristers' Benevolent Association in memory of another of his benefactors, Viscount Alderstone, Lord Chief Justice of England, and of Theo. Adton, K.C., "long my kind friend."

Mr. Lansdowne Harding, solicitor, of Bishopsgate, E.C., and of Willesden, left £24,454, with net personality £22,750.

COUNTY COURT CALENDAR FOR JANUARY, 1942.**Circuit 1—Northumbria**

berland

His HON. JUDGE RICHARDSON

Alnwick,

Berwick-on-Tweed,

Blyth, 15

Consett, 30

Gateshead, 13

Hexham,

Morpeth,

Newcastle-upon-Tyne,

7 (R.B.), 16 (J.S.),

20, 27 (B.)

North Shields, 22

Seaham Harbour, 26

South Shields, 28

Sunderland, 9 (R.B.),

14, 29

Circuit 2—Durham.

His HON. JUDGE GAMON

Barnard Castle, 15

Bishop Auckland, 27

Darlington, 14 (J.S.),

28

Durham, 13 (J.S.), 26

Guisborough, 21

Leyburn, 19

Middlesbrough, 7 (J.S.),

20, 22

Northallerton, 29

Richmond,

Stockton-on-Tees, 9

(J.S.)

Thirsk,

West Hartlepool, 8

(J.S.)

Circuit 3—Cumberland.

His HON. JUDGE ALLSBROOK

Alston, 30

Appleby, 10 (R.)

Barrow-in-Furness, 14,

15

Brampton,

Carlisle, 14 (R.), 28

Cockermouth, 22

Haltwhistle,

Kendal, 27

Keswick,

Kirkyr, Lonsdale, 13

(R.)

Millom, 20

Penrith, 29

Ulverston, 13

Whitewhaven, 21

Wigton,

Windermere, 8 (R.)

Workington,

Circuit 4—Lancashire.

His HON. JUDGE PEEL,

O.B.E., K.C.

Accrington, 22

Blackburn, 5 (R.B.),

12, 19 (J.S.)

Blackpool, 7, 8, 9

(R.B.), 14, 21 (J.S.)

Chorley, 15

Clitheroe, 13 (R.)

Darwen, 23 (R.)

Lancaster, 9

Preston, 6, 16 (J.S.),

20, 23 (R.B.)

Circuit 5—Lancashire.

His HON. JUDGE HARRISON

†Bolton, 14, 20 (J.S.),

28

Bury, 12, 19

Oldham, 15, 22, 29

(J.S.)

Rochdale, 23 (J.S.), 30

Salford, 13, 16, 21, 26,

27

Circuit 6—Lancashire.

His HON. JUDGE CROTHWAITE

His HON. JUDGE PROCTER

Liverpool, 5, 6, 7, 8,

9, 12, 13, 14, 15, 16,

19, 21, 22, 23, 26,

28, 29, 30

St. Helens, 7, 21

Southport, 6, 27

Widnes, 9

Wigan, 8, 22

Circuit 7—Cheshire.

His HON. JUDGE RICHARDS

Altringham, 14

Birkenhead, 8 (R.),

15 (R.), 16, 19 (J.S.),

21 (R.), 22, 29 (R.)

Chester, 6, 20

Crewe, 23

Market Drayton, 30

Nantwich, 30

Northwich, 29

Runcorn, 27

Warrington, 15

Circuit 8—Lancashire.

His HON. JUDGE LEIGH

Leigh, 16, 30

Manchester, 12, 13,

14, 15, 16 (B.), 19,

20, 21, 22, 26, 27,

28, 29, 30 (B.)

Circuit 10—Lancashire

His HON. JUDGE BURGIS

Ashton - under - Lyne,

9, 23, 26 (B.)

Burnley, 15, 16

Colne,

Congleton, 30

Hyde, 21

Macclesfield, 8, 13 (B.)

Nelson, 14

Rawtenstall, 7

Stalybridge, 29 (J.S.)

Stockport, 6, 20, 28

(J.S.), 30 (B.)

Todmorden, 13

Circuit 12—Yorkshire

His HON. JUDGE FRANKLAND

Bradford, 16, 21 (R.B.)

27, 30 (J.S.)

Dewsbury, 8 (R.)

Esholt, 13 (R.B.), 13

Halifax, 8, 9 (J.S.),

16 (R.B.)

Huddersfield, 6, 7

(J.S.), 14 (R.)

Keighley, 22

Otley, 21

Skipton, 23

Wakefield, 20, 27 (R.)

(R.B.)

Circuit 13—Yorkshire

His HON. JUDGE ESSENHIGH

Barnsley, 14, 15, 16

Glossop, 21 (R.)

Pontefract, 19, 20, 21

Rotherham, 6, 7

Sheffield, 8, 9 (J.S.),

16 (R.), 22, 23 (J.S.)

27 (J.S.), 29, 30

Circuit 14—Yorkshire

His HON. JUDGE STEWART

Easingwold,

Harrogate, 23 (R.), 30

Helmsley,

Leeds, 7, 8 (J.S.),

9 (R.), 14, 15 (J.S.),

21, 22 (J.S.), 23 (R.)

27 (R.B.), 28, 29

(J.S.)

Ripon,

Tadcaster, 20

York, 6

Circuit 16—Yorkshire

His HON. JUDGE GRIFFITH

Beverley, 8 (R.), 9

Bradlington, 5

Goole, 20

Great Driffield, 19

Kingston - upon - Hull

12 (R.), 13 (R.), 14,

15, 16 (R.), 19

(R.B.), 26 (R.)

New Malton, 21

Pocklington, 29

Scarborough, 6 (R.),

7, 13 (R.B.)

Selby, 30

Thorne, 22

Whitby, 7 (R.), 8

Circuit 17—Lincolnshire

His HON. JUDGE LANGMAN

Barton-on-Humber,

Boston,

Brigg,

Caistor,

Gainsborough,

Grantham,

Lincoln,

Louth,

Market Rasen,

Scunthorpe,

Skegness,

Sleaford,

Spalding,

Spilsby,

Circuit 18—Nottinghamshire

His HON. JUDGE FINNEMORE

Burton,

Doncaster, 7, 8, 9, 26

East Retford, 13 (R.)

Mansfield, 12, 13

Newark, 9 (R.), 10

Nottingham, 8 (R.B.),

14, 15 (J.S.), 16, 21

22, 23 (B.)

Worksop, 6 (R.), 20

Uttōxeter, 30

Circuit 19—Derbyshire

His HON. JUDGE WILLES

Alfreton, 20

Ashbourne, 13

Bakewell,

Burton-on-Trent, 21

(R.B.)

Circuit 20—Leicestershire

His HON. JUDGE CAMPBELL

Ashby-de-la-Zouch, 22

Ilkeston, 27

Long Eaton,

Matlock,

New Mills,

Wirksworth,

Circuit 21—Warwickshire

His HON. JUDGE DALE

FINNEMORE (Add.)

Birmingham, 8, 9, 12,

13 (B.), 14, 15, 16,

17, 20, 21, 22, 23,

26, 27, 28, 29, 30

Circuit 22—Herefordshire

His HON. JUDGE ROOKE

REEVE, K.C.

Bromsgrove,

Bromyard,

Cleobury-Mortimer,

Evesham,

Great Malvern,

Hay,

Hereford,

Kidderminster,

Ludlow,

Shropshire,

Worcester,

Circuit 23—Northamptonshire

His HON. JUDGE FORBES

Atherstone, 29

Northampton, 6 (R.),

9, 12, 13, 23

Nuneaton, 14

Pewsey, 21

Rugby, 15, 22 (R.)

Shipston-on-Stour, 6

Circuit 24—Monmouthshire

His HON. JUDGE THOMAS

Abergavenny,

Abberley,

Blaenau Gwent,

Brecon,

Cwmbran,

Llanelli,

Llandovery,

Llanidloes,

Llanover,

Llanwrtyd,

Llansadwrn,

Llansantffraid-

Glan-y-Morfa,

Llansantffraid-

Llanwrtyd-

To-day and Yesterday.

LEGAL CALENDAR.

29 December.—One October night in 1825 the "Comet" steamboat proceeding with passengers from Inverness to Fort William was run down in the Clyde near Gourock by another steamboat, the "Ayr." Of more than eighty persons on board only eleven were saved. The circumstances of the collision were such that Duncan M'Innes, the master of the "Comet," was tried before the High Court of Admiralty and found guilty, but on the 29th December, 1825, the High Court of Justiciary reconsidered his case. He had been charged (1) with culpable homicide and (2) with negligent steering, set out as separate crimes, but then the indictment had gone on to say not that the prisoner was "guilty of the said crimes or one or other of them," but that he was "guilty of the said crime actor on art and part." This was now held to constitute an ambiguity and M'Innes was ordered to be set at liberty.

30 December.—On the 30th December, 1667, Pepys wrote: "To Sir G. Carteret's in Lincoln's Inn Fields and there did dine together, there being there, among other company, Mr. Attorney Montagu and his fine lady, a fine woman." Evidently he had changed his mind since he first saw her about six years before, for then he wrote of a dinner party where they were invited: "Mr. William Montagu and his lady (but she seemed so far from the beauty that I expected her from my lady's talk to be that it put me into an ill humour all the day to find my expectation so lost)." Montagu was Attorney-General to the Queen in 1662 and became Chief Baron of the Exchequer in 1676. The lady, his second wife, was Mary, daughter of Sir John Aubrey, Bart.

31 December.—On the 31st December, 1781, "Henry Laurens, Esq., late President of the Congress of America, was brought from the Tower of London by the Deputy Governor, in consequence of an order from the Secretary of State, before Lord Mansfield at his lordship's chambers at Serjeants' Inn in Chancery Lane and upon certain conditions was discharged. He has since gone to Bath for the recovery of his health." Laurens was an American statesman who in the course of the War of Independence was captured off Newfoundland by the British while on his way to negotiate a loan in Holland. His papers contained a sketch of a treaty between the Dutch and the insurgent States and the discovery led to war between Great Britain and the United Provinces. Soon after his release on parole he was exchanged for General Cornwallis who had been taken prisoner at Yorktown.

1 January.—John Frost, the Chartist leader, believed in reform by force and his name stands out in social history as the organiser of the miners' assault on Newport in 1839. Though plans miscarried and many of his men failed to assemble in the night when they were to have marched, by daylight he found himself at the head of five thousand insurgents armed with guns, swords, pikes and pickaxes. With this force he attacked the town and a battle took place at the Westgate Hotel held by thirty soldiers and some special constables, who won an easy victory, twenty Chartists being shot dead and many wounded. A special commission went to Monmouth to try the prisoners taken, and Frost was placed at the bar on the 1st January, 1840. He was found guilty of treason and sentenced to death, but being reprieved he was transported instead to Van Diemen's Land, where he spent nearly fifteen years, first as a convict and later as a police clerk. He returned to England in 1856.

2 January.—Thomas Muir, the son of a flourishing Glasgow tradesman, was admitted into the Faculty of Advocates at Edinburgh in 1787 and started at the Bar with good prospects, but the tremendous upheavals in political thought then manifesting themselves were too much for his energetic nature. Not only did he plead gratuitously for those whom he thought oppressed, but when it was proposed to found in Scotland a Society of the Friends of the People his talents as a speaker made him so prominent that on the 2nd January, 1793, he was arrested on a charge of sedition. Following the advice he had always given his clients, he refused to answer the sheriff's questions and was released on bail. He immediately left for Paris, where the Revolution was at its height, arriving the day before the King's execution. After enjoying the hospitality of "an amiable and distinguished circle" he returned to Edinburgh to find himself outlawed. He was tried and sentenced to fifteen years' transportation to Botany Bay, but in 1796 he escaped. He was wounded in an encounter with English ships and died of his injuries in France in 1798.

3 January.—On the 3rd January, 1750 "at a meeting of many inhabitants of Westminster it was unanimously agreed to deliver a petition signed by 1,400 names to Sir Peter Warren, one of their members, with a request that he would present it to Parliament, for a Bill for the more easy and speedy recovery of small debts within Westminster and its liberties."

4 January.—Benjamin Danby was the son of a maker of barristers' wigs in the Temple. His father left him a life annuity amounting to a guinea a week and with this competence he went to live with a cousin at Enfield Chase. One evening in December he spent some hours at the "Three Horseshoes" drinking and playing dominoes. When he left at a quarter past ten he was

tipsy and staggering and three of his companions said they would see him home, William Johnson, a local gardener's son, Samuel Cooper, a young carter, and Samuel Fare, a man of no occupation. Next morning his body was found in a ditch in Holt White's Lane, the face dreadfully slashed and the throat deeply stabbed. He had been robbed of the money he had on him. Cooper turned King's evidence, and on the 4th January, 1833, Johnson was tried at the Old Bailey and convicted of murder. He was sentenced to death, while Fare, who was only found guilty of stealing from the deceased, was sent to fourteen years' transportation.

ASSIZE CEREMONIAL.

An evening paper lately published an article describing the scene in the High Street of an assize town in the "Coastal Zone" as the judge goes to court. "Four motor cycles, eight gallons of petrol, top hats, white ties, lorries held up, two trumpeters trumpeting and everything standing still." The journalist told of the bewilderment of a French Canadian officer at these little extras in the daily round. Doubtless the spirit of this or that particular piece of ceremonial would be hard to transplant or to translate. So at any rate an Englishman appointed to the New Zealand Bench in 1860 discovered. On his first circuit he came to a town where the sheriff, hearing that he was a stickler for etiquette, had provided himself with a top hat and frock coat and the judge with an open carriage and horses (more or less a pair). Instead of appreciation he got a scolding for not having an escort of javelin men into the bargain. On his next circuit the judge had learnt what not to expect, but the sheriff had remembered and hired half a dozen "supers" from a theatrical company with tin helmets and breastplates and wooden halberds. But to return to England, if the journalist in the "Coastal Zone" had told the Canadian to read Lord Justice MacKinnon's delightful book on the circuits, our guest might have come to understand how this ceremonial of assizes came about and how it reflects local life and traditions as personal and distinct as our faces and our dialects. Some of these traditions would certainly have surprised him; the Lord Mayor's state coach conveying the judge to court at Bristol; the Latin petition for a half-holiday presented to the judge by the Prefect of Hall at Winchester and answered in the same language; the custom of lodging the judge at Durham in the Bishop's suite; the presentation of "dagger money" at Newcastle to enable the judge to hire an armed guard on the perilous journey to Carlisle; and perhaps, strangest of all, the custom of sending two officers of the garrison at Exeter to ask the judge's leave for the troops to be let out of barracks and to present him with "the state," that is, statistics as to the officers, other ranks, horses, wagons, field kitchens and guns. So long as human personality with its infinite variety has value, such expressions of it as these have value too.

Notes and News.

Mr. Ernest E. Bird has been re-elected chairman of the Legal & General Assurance Society, Ltd., for the ensuing year. The Hon. W. B. L. Barrington has been re-elected vice-chairman.

NATIONAL HEALTH AND PENSIONS INSURANCE CHANGES.

In consequence of the passing of the National Health Insurance, Contributory Pensions and Workmen's Compensation Act, 1941, the following changes will operate from 5th January, 1942:

(1) Non-manual workers will be compulsorily insured unless their remuneration exceeds £420 per annum (instead of £250 as hitherto). This brings health and pensions insurance into line with unemployment insurance.

(2) The rate of the weekly health insurance contribution will be increased by 2d., of which 1d. is to be borne by the employer and 1d. by the worker. The effect on the combined health and pensions insurance contribution will be to raise it to 2s. in the case of a man and to 1s. 7d. in the case of a woman. Of these contributions the worker's share will normally be 1s. for a man and 10d. for a woman.

(3) The ordinary rates of sickness and disablement benefit will each be increased by 3s. a week.

IMPORTANT PAPER SAVING RULINGS.

Three decisions, containing rulings which are important to company directors and secretaries have just been communicated by Mr. H. G. Judd, Controller of Salvage. With the urgent need for stringent economy in the use of paper, and the releasing of stocks of old paper for repulping into fresh stocks, these decisions have been arrived at in order to achieve both objects.

(a) It is no longer necessary for the annual return to be contained in the register of members. (The return should be forwarded to the Registrar of Companies: a copy is not required.)

(b) Where a copy of any annual return made before 10th July, 1940, has been forwarded to the Registrar of Companies the return may be removed from the register of members and disposed of for salvage.

(c) Transfer deeds of securities of a company (i.e., shares, stocks, bonds, debentures or debenture stock in or issued by the company) need not be kept for more than three years after the transfer has had effect, provided that the disposal is carried out in good faith and that no notice of any claim to which the deed might be relevant has been received.

Notes of Cases.

COURT OF APPEAL.

Pritchard-Jones v. Le Vaye.

Lord Greene, M.R., Clauson and du Parcq, L.J.J. 5th November, 1941.

Emergency legislation—Mortgage applies for leave to appoint a receiver—Rents of property exceed mortgage interest—Whether court bound to effect equality between secured creditors—Courts (Emergency Powers) Act, 1939 (2 & 3 Geo. 6 c. 67), s. 1 (2).

Appeal from a decision of Simonds, J.

The appellant, the borrower, was the owner of a number of properties, all of which were mortgaged, one being mortgaged to the respondent. It was admitted that the rents of this latter property was sufficient to keep down the mortgage interest, and the respondent applied under the Courts (Emergency Powers) Act, 1939, for leave to appoint a receiver. Simonds, J., made an order granting leave. The borrower appealed on the ground that the rents from the other properties were insufficient to discharge the interest on the mortgages charged thereon and the rent of this property should be available for the purpose of equalising the payments to the several mortgagees.

LORD GREENE, M.R., dismissing the appeal, said the object of the Courts (Emergency Powers) Act, 1939, was to give a measure of protection to debtors against their creditors. The debtor must show that the result of an order in his favour would be to give him relief from the misfortunes which the war had brought upon him. The present application was for the benefit of the other mortgagees. As between unsecured creditors, if one were allowed to proceed to execution he might thereby get an advantage over other unsecured creditors, and if relief were refused to the debtor justice might result. In the case of secured creditors there was at the outset inequality. One might have a good security, the other a bad one. It was not for the court to give to the creditor with the worse security the advantage which belonged to the creditor with the better. The court was concerned primarily with the debtor, although it must bear in mind the consequences of its action as regards other creditors. Where there were only unsecured creditors, the position differed from that where there were both secured and unsecured creditors. In the latter case there was an existing inequality which it was no part of the court's function to remove.

CLAUSON and DU PARCQ, L.J.J., agreed.

COUNSEL : W. Summerfield ; W. F. Waite.

SOLICITORS : Schindler & Co. ; Bull & Bull.

{Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

CHANCERY DIVISION.

In re Caidan ; Ex parte Official Receiver v. Regis Property Co., Ltd.

Morton, J. 11th November, 1941.

Bankruptcy—Landlord distrains within three months of receiving order on the goods of the tenant's wife—Goods sold by bailiff—Whether proceeds of sale payable to trustee in bankruptcy—Bankruptcy Act, 1914 (4 & 5 Geo. 5 c. 59), s. 33 (4).

Motion.

By a lease of 1935 certain premises were demised to C for a term of fourteen years. C became in arrears with his rent, and on the 10th February, 1939, R.P., Ltd., the landlords, distrained. Amongst the goods seized by the bailiff were goods belonging to the tenant's wife. Eleven days later a receiving order was made against the tenant's wife and she was adjudicated bankrupt. The goods were subsequently sold by the bailiff realising £50. Priority debts unprovided for in the bankruptcy exceeded this sum. By this motion the Official Receiver, as the trustee in bankruptcy of the debtor, asked for the payment to himself by R.P., Ltd., of the sum of £50. Section 33 of the Bankruptcy Act, 1914, after providing that certain debts shall rank in priority to other debts in the distribution of the property of a bankrupt, by subs. (4) provides : "In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt within three months next before the date of the receiving order the debts to which priority is given by this section shall be first charge on the goods or effects so distrained on, or the proceeds of the sale thereof"

MORTON, J., said that five questions arose on subs. (4). The first was "Can the trustee in bankruptcy enforce the charge ?" In his view the trustee could do so. He was the person through whom the priority creditors under subs. (1) of s. 33 were paid. The second question was against whom could the charge be enforced ? In his view, "the landlord or other person" referred to in the subsection was the principal on whose instructions the distress was levied and not the agent through whom the distress was actually carried out. The third question, "When does the charge arise ?" admitted only one answer. It arose on the making of the receiving order. As regards the effect of the charge, which was the fourth question, in the present case, on the making of the receiving order the charge came into operation and was a charge on the goods and effects in the hands of the bailiff. The respondent company were liable to pay to the trustee in bankruptcy a sum equivalent to the proceeds of sale. The fifth question was whether the charge arose when the bankrupt was not the tenant of the premises when the distress was levied. It was not necessary to decide whether the company were "landlords" within the meaning of the section, because it was clear that they came within the words "the landlord or other person." The result was that the company, having distrained on goods of the bankrupt within three months next before the date of the receiving order, the debts to which priority was given by s. 33 were a charge on such goods, and the

respondents were liable to pay to the trustee in bankruptcy the sum of £50.

COUNSEL : W. A. L. Raeburn ; Astell Burt.

SOLICITORS : Tarry, Sherlock & King ; Wedlake, Letts & Birds.

{Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Owens v. Minoprio.

Viscount Caldecote, C.J., Hilbery and Asquith, J.J. 2nd December, 1941.

Summary Jurisdiction—Withdrawal of summons for informality and not on merits—No bar to proceedings on fresh summons.

Case stated by Caernarvonshire justices.

An information was preferred by the appellant against the respondent for failing to comply with a billeting notice. An earlier information had been preferred against him by a different person in respect of an alleged offence arising out of the same notice. There being some informality in the earlier information, the present appellant, before it was heard, applied in the presence of the respondent for the withdrawal of that information, whereupon the second information was proceeded with. During the hearing of it the respondent took objection to the proceedings on the ground that he had already been put in peril by the summons which had been withdrawn. The justices upheld the objection and dismissed the information. The police officer appealed.

LORD CALDECOTE, C.J., said that the justices, in dismissing the second information, had been under the impression which, as stated in the case, they now agreed to be mistaken, that they were required to do so by *Pickavence v. Pickavence* [1901] P. 60, where an information was preferred by a wife against her husband for cruelty, and a separation order was sought. Before that information was laid, two similar informations had been sworn by the wife, the second of which, like that before the court, was out of time. Sir Francis Jeune, P., in his judgment referred to the question whether the withdrawal of a summons amounted to a complete withdrawal of the complaint so that it could not be proceeded upon, and, having said that there was no authority on the point but that in his opinion the effect was to put an end to the complaint, went on to say that it was unnecessary to go so far as that because the complaint before the court was out of time, which was sufficient ground on which to dismiss it. In his (the Lord Chief Justice's) opinion that statement of the President was not an actual decision to the effect stated in the headnote in the Law Reports. It was no more than an *obiter dictum* and accordingly not an authority for the proposition set out in the headnote. In so far as it was a decision to that effect, *Pickavence v. Pickavence*, *supra*, had, however, been disapproved in *R. v. Tyrone Justices* [1912] 2 I.R. (C.L.). It was also discussed in *Davis v. Morton* [1913] 2 K.B. 479. Those were actual decisions to the effect that when the withdrawal of a summons was permitted by justices not on the merits of the case but on a preliminary point that withdrawal was not equivalent to dismissal of the summons or to an acquittal. See per Pickford, J. The basic principle of *autrefois acquit* was that the person charged had already been put in peril. Here there had been no withdrawal of the earlier summons on the merits of the case, but only a withdrawal with the consent of the justices in consequence of an informality in the proceedings. That informality having been corrected, the second information was laid by a different person. It was highly desirable that *Pickavence v. Pickavence*, *supra*, should no longer appear as an authority in the books to the effect stated. All it decided was that the particular summons was out of time, a decision hardly likely itself to be reported. It did not decide that withdrawal of a summons in any circumstances was a bar to subsequent proceedings on the same facts.

COUNSEL : Valentine Holmes ; there was no appearance by or for the respondent.

SOLICITORS : Evan Davies & Co. for Evan R. Davies & Davies, Pwllheli.

{Reported by R. C. CALDURN, Esq., Barrister-at-Law.]

Exelby v. Smith.

Viscount Caldecote, C.J., Hilbery and Asquith, J.J. 3rd December, 1941.

Emergency legislation—Fire-watching—Fire-watcher's dwelling-house in yard of premises to be watched—Time spent in house not an absence from duty.

Appeal by case stated from a decision of Clitheroe justices.

The Chief Constable of Clitheroe preferred an information against the respondent, Smith, under the Fire Watchers Order, 1940, made under the Defence (General) Regulations, 1939, alleging that on the 14th April, 1941, having undertaken to act as a fire-watcher at premises to which the order applied, he was not present at the premises during the period for which he had undertaken so to act. The following facts were established : Smith undertook fire-watching duty at a mill and warehouse belonging to a company, and he lived at a dwelling-house in the yard of the mill and warehouse and under the same roof. During part of his period of fire-watching he was in his house for some ten minutes. It was contended for the superintendent that Smith should have been actually in the warehouse or mill during the whole of the period for which he had undertaken the duties, and that he had committed a breach of the order in being inside his own house for a part of that time. It was contended for Smith that the house was part of the mill buildings as it was under the same roof and owned by the same persons, and had at the back no access to the highway except through the mill yard. The justices found as facts that the house was part of the premises and that Smith had never left them. They therefore dismissed the information. The superintendent appealed.

LORD CALDECOTE, C.J., said that it was impossible, on the scanty information in the case stated, to disturb the justices' finding. The appeal must be dismissed.

HILBERY, J., said that it was impossible to say that there was no evidence on which the justices could find that the dwelling-house was part of the mill and warehouse or that Smith had in fact ever left the premises which it was his duty to watch.

ASQUITH, J., agreed.

COUNSEL : *Gatton*; there was no appearance by or for Smith.

SOLICITORS : *Sharpe, Pritchard & Co.*, for the Town Clerk, Clitheroe.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY.

Ware v. Ware.

Bucknill, J. 7th November, 1941.

Divorce—Desertion for three years immediately preceding presentation of petition—Offer of reconciliation—Not genuine—Ends desertion only if genuine—Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. 5, c. 49), s. 176; Matrimonial Causes Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 2.

Husband's undefended petition for dissolution of marriage on the ground of desertion for three years immediately preceding the presentation of the petition.

In March, 1938, the respondent told the petitioner she was in love with another man and wanted a divorce, and on 13th March, 1938, she left the petitioner and did not return. On 7th June, 1938, the respondent wrote to the petitioner that in spite of his generous offer to have her back she had thought it over, and did not think it would work if they started all over again. On 14th October, 1939, less than two years before the petition was filed, she wrote to the petitioner from Aberdeen asking him to "consider the future together again." The petitioner did not reply.

BUCKNILL, J., said that the difficulty which had arisen in the case was due to the decision in *Pratt v. Pratt* [1939] A.C. 417; 83 Sol. J. 730, which, in effect, said that before a husband could get a divorce on the ground of desertion he must show that the desertion had continued right up to the time that he filed his petition, and if at any time during the three years preceding the filing of the petition the wife or husband, as the case might be, had made a genuine offer to come back and terminate the desertion, and the husband had refused to accept that offer, he could not any longer say that the wife was a deserting wife. That decision must not be used as a device to interrupt the running of the statutory three years, and it could only be applied if the court was satisfied that there was a genuine offer to resume cohabitation. In this case he was not satisfied that there was any such offer, and there would be a decree *nisi*.

COUNSEL : G. F. Stringer.

SOLICITORS : *Hewitt, Woollatt & Co.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Rules and Orders.

S.R. & O., 1941, No. L.35/2041.

SUPREME COURT, ENGLAND—PROCEDURE.

THE RULES OF THE SUPREME COURT (No. 8), 1941.
DATED DECEMBER 17, 1941.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by section 1 of the Administration of Justice (Emergency Provisions) Act, 1939,* and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby make the following Rules under section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925†:—

1. The following Rule shall be inserted in Order XVI after Rule 28 and shall stand as Rule 28A:—

"**28A. Members of H.M. Forces in Matrimonial Causes.**—(1) The provisions of this Rule shall have effect where the conducting solicitor is a solicitor employed by the Law Society for the purpose of conducting poor persons matrimonial causes in which the poor person or any party or any intended party to the cause or any person entitled to apply for leave to intervene in the cause is a member of His Majesty's Forces.

(2) Where a solicitor employed by the Law Society as aforesaid is nominated by a Committee as conducting solicitor for the purpose of the proceedings, the Committee shall pay to the Law Society in respect of the proceedings the sum of three guineas, or such lesser sum as the Law Society may from time to time prescribe, towards the cost of the employment of the conducting solicitor and of the department of the Law Society under his supervision.

(3) For the purpose of making any such payment, the Committee may utilise any sum deposited by the poor person in pursuance of a requirement of the Committee under paragraph (5) of Rule 28 of this Order, and the said payment shall be additional to the payment by the Committee under that paragraph of any out-of-pocket expenses of the conducting solicitor.

(4) The provisions of this Rule shall have effect notwithstanding anything in paragraphs (2) and (5) of the said Rule 28.

(5) In this Rule the expression 'member of His Majesty's Forces' does not include a member of the Home Guard, but, save as aforesaid, includes every person who is a member of His Majesty's Forces for the purposes of the Marriage (Members of His Majesty's Forces) Act, 1941."

2. In Rule 30 of Order XVI, the following words shall be added to paragraph (3), namely:—

"or unless he shows to the satisfaction of the conducting solicitor that another counsel can be briefed in the proceedings without prejudice to the conduct thereof"

3. In Rule 31B of Order XVI, the following words shall be added to paragraph (1), namely:—

"Whether such an order is made or not, the Court or a Judge may, in a case to which Rule 28A applies, order any sum paid to the Law Society under that Rule out of the deposit paid by the poor person, to be paid by any other party."

4. In Appendix N to the Rules of the Supreme Court, in Item 106 (which relates to the maximum amount per folio which may be allowed on taxation for printing pleadings, &c.), "3s. Id." shall be substituted for 3s. in both the Higher Scale and the Lower Scale.

5. These Rules may be cited as the Rules of the Supreme Court (No. 8), 1941, and shall come into operation on the 1st day of January, 1942.

Dated the 17th day of December, 1941.

Simon, C.

We concur,
Caldecote, C.
Merriman, P.

War Legislation.

STATUTORY RULES AND ORDERS, 1941.

- No. 1985. **Alien.** Landing and Embarkation. Direction, Dec. 8.
- No. 2051. **Cinematograph Films** (Quota Amendment) Order, Dec. 18.
- E.P. 2029/S.58. **Civil Defence.** Employment and Offences) No. 2 Order (Scotland), Nov. 29.
- E.P. 2000. **Consumer Rationing** (No. 8) Order, Dec. 16.
- E.P. 2042-2047. Consumer Rationing (No. 8) Order, 1941. Licences and General Licences, Dec. 17.
- No. 2028. **Contributory Pensions** (Voluntary Contributors) Amendment Regulations, Nov. 22.
- E.P. 1986. **Control of Building Operations** Order, Dec. 10.
- E.P. 2064. Control of Paper (No. 38) Order, Dec. 18.
- No. 1967. **Customs.** Export of Goods (Control) (No. 43) Order, Dec. 9.
- No. 2014. Customs. Export of Goods (Control) (No. 44) Order, Dec. 16.
- No. 2020. Customs. Export of Goods (Control) (No. 45) Order, Dec. 16.
- No. 2027. Customs. Import Duties (Drawback) (No. 2) Order, Dec. 17.
- E.P. 2055/S.59. **Defence** (Administration of Justice) (Scotland) Regulations, 1940. Order in Council, Dec. 18, adding reg. 3A.
- E.P. 2010. Defence (Armed Forces) Regs., 1939. Order in Council, Dec. 12, amending reg. 6.
- E.P. 2059. Defence (Auxiliary Coastguard) Regs., 1941. Order in Council, Dec. 18.
- E.P. 2056. Defence (Companies) Regs., 1940. Order in Council, Dec. 18, adding reg. 8.
- E.P. 2011. Defence (General) Regs., 1939. Order in Council, Dec. 12, adding reg. 47BB and amending regs. 56A and 93, and the 3rd Sched.
- E.P. 2052. Defence (General) Regs., 1939. Order in Council, Dec. 18, amending regs. 1, 16A, 18A, 18BB, 23AA, 28, 29, 29B, 39A, 55, 56, 58A, 62, 79, 84A, 100 and 102, and the 3rd Sched., and adding regs. 28A, 29BA, 58AD, 80B and 99A.
- E.P. 2054. Defence (National Fire Service) Regs., 1941. Order in Council, Dec. 18, amending reg. 2.
- E.P. 2008. **Essential Work** (Coalmining Industry) (Amendment) Order, Dec. 9.
- E.P. 1993. **Food.** Infestation Order, Dec. 10.
- E.P. 2015. Food (Points Rationing) Order, 1941. Amendment Order, Dec. 13.
- E.P. 2026. Food (Points Rationing) Order, 1941. General Licence, Dec. 16.
- E.P. 2022. Food (Restriction on Dealings) Order, 1941. General Licence, Dec. 15.
- E.P. 2025. Food (Restriction on Dealings) Order, 1941. Amendment Order, Dec. 16.
- No. 2033. **Government of India** (Adaptation of Acts of Parliament) (Amendment No. 2) Order in Council, Dec. 9.
- No. 2034. Government of India (Scheduled Castes) (Amendment) Order in Council, Dec. 9.
- E.P. 1999. **Legal Proceedings** (Mines Dept.) Order, Dec. 9.
- E.P. 1998. **Motor Vehicles** (Control) Order, Dec. 5.
- No. 1970. **National Health Insurance** and Contributory Pensions (War Occupations) Amendment Regs., Nov. 26.
- E.P. 1590. **Police.** Public Utility Undertakings Police (Employment and Offences) Order, Oct. 9.
- No. 2024. **Prices of Goods** (Price Regulated Goods) Order, Dec. 16.
- No. 2041/L.35. **Supreme Court**, England, Procedure. Rules of the Supreme Court (No. 8), Dec. 17.
- No. 2016. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 21) Order, Dec. 18.
- E.P. 2069. **Undertakings** (Restriction on Engagement) Order, Dec. 18. [E.P. indicates that the Order is made under Emergency Powers.]

Copies of the above S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Mr. Dudley Evans, the senior partner of Messrs. Boyce, Evans & Sheppard, solicitors, of 12, Cavendish Square, W.1, has been elected a member of the council of Dr. Barnardo's Homes.

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